

Personal Use of Public Property

HB 163-Offenses Against the Administration of Government Amendments

Human Resource Implications

Offenses Against the Administration of Government

- Abuse of Office
 - Unauthorized Acts
- Corrupt Practices
 - Bribery
- Obstructing Governmental Operations
 - Threatening Elected Officials
 - Interfering with a Peace Officer
- Offenses Against Public Property
 - Prohibitions to Misuse of Public Money

HB 163

- Adds “public property” to misuse of public money prohibitions
- Makes all personal use of public property that is not “authorized use” a violation by the officer/employee that uses the public property
- Also creates violation for official that allowed unauthorized personal use due to failure to “keep” the public property

So What?

- Clarifying that unauthorized personal use is a crime is ok, other states have clear statutory language that it is a crime.
- But there are no qualifiers/quantifiers in HB163, meaning even the smallest unauthorized personal use is a violation.

Yah, So What?

- Violation is a felony no matter the size of violation
 - Potential jail time
 - Potential fines
 - Disqualification from holding public office
 - Loss of employer portion of URS benefits (U.C.A. 49-11-1401)

Does not specify who enforces, so any agency could begin investigation and push for felony charges with any prosecutor

OK, So What...Do We Do?

- Review all potential personal use of public property
- Adopt policies to authorize or prohibit personal use of public policy

Personal Use Examples

Phone Systems
Cell Phones
Computers
Laptops/Tablets
Software
Copiers/Printers

Vehicles (owned/rented)
Fuel
Trailers
Handheld Tools
Light Equipment
Heavy Equipment
Drones
Surveying Equipment
Cameras
Projectors
Weapons/Ammunition
Tactical Gear

Exercise Equipment
Daycare Facilities
Meeting Rooms
Event Facilities
Shooting Ranges
Golf Courses
Swimming Pools

Reasons I've Heard for Personal Use

- Considered an employee benefit
- Convenience for both county and employee
- Some personal uses provide benefit to county
- Some personal uses provide a benefit to the community

Issues to Address in Policies

- Personal use on premise
- Personal use off premise
- Damage to property during personal use
- Personal use for others (charitable organizations, fund raisers...)

Developing Personal Use Policies

- Must address all potential personal use
- Coordinate all policies to address any conflicts
- Must be in place by July 1
- Policy not required for “Incidental Use”

Incidental Use

“Authorized use” includes “incidental use”

- Incidental use of public property for a personal matter by public servant, if:
 - Value of public use substantially outweighs the value of the personal matter; and
 - The incidental use is not prohibited by law or policy

M. Webster defines “incidental” as being likely to ensue as a chance or minor consequence.

Anything more than incidental use for a personal matter must be authorized by policy.

Limitations on Authorizing by Policy

“Authorized Personal Use” means:

- Public servant is authorized to use or possess the property to fulfill their public duties;
- The primary purpose of use by the public servant is to fulfill their public duties;
- A written policy must be in effect at the time of use; and
- Public servant uses the property in a lawful manner and in accordance with the policy.

Getting it Done

UAC/UCIP have helped counties share drafts of policies to have new policies in place for the July 1 effective date.

Policy drafts and policies adopted follow two general strategies:

- 1) Attempt to broadly identify those uses that are authorized and those that are prohibited, and defining “incidental” to cover many items that cannot otherwise be authorized by policy.
- 2) Authorizes all personal use unless the employee has been provided a written warning that future use is unauthorized (with some limited prohibited use items in the policy).

Going Forward

- Legislature intends to make changes in 2020 Session (possibly special session item)
- Review personal use in all departments
- Train employees on new policy, and be prepared to retrain on revised policy based on legislative changes
- Be clear about public property provided as a benefit or convenience to employees and whether it is required or is necessary to recruit and maintain staff